IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 423 of 1999

with

CRIMINAL REVISION APPLICATION No 400 of 1999

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SUNITABEN PRAVINCHANDRA GANDHI

Versus

STATE OF GUJARAT

Appearance:

MR SV RAJU for Petitioner

MR ND GOHIL, APP for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 27/04/2000

ORAL JUDGEMENT

1. These revisions can be heard and decided by common judgement and order inasmuch as they involve identical questions of law.

2. The petitioner in Criminal Revision Application No.423/99 was accused no.4 in Special Case No.15/99 in the court of Special Judge (Atrocities) at Ahmedabad. The petitioner in Revision Application No.400/99 was the only accused in the chargesheet in Atrocity Case No.8/98 before the Special Judge (Atrocities) at Ahmedabad.

3. The common question of law raised in these two revisions is as to whether the charge under the Atrocities Act is sustainable in view of the legal position. Each of the petitioners as concerned accused in the relevant Special Case had applied for discharge, which application was rejected. Hence the present revisions.

4. The specific contention raised by the two petitioners in these two revisions arises from a consideration of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the rules framed thereunder. At this stage it is relevant to refer to the Rules of 1995 framed under the said Act and particularly Rule 7(1) thereof. The said Rule 7(1) reads as under:

> "7. Investigating Officer - (1) An offence committed under the Act shall be investigated by a Police Officer not below the rank of a Deputy Superintendent of Police. The Investigating Officer shall be appointed by the State Government/Director General of Police/Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time."

5. In the context of this rule it is submitted that the FIR filed by Samant Parmar which led to the investigation was actually investigated only by an Inspector of Police, and not by an officer equivalent or higher in rant to a Deputy Superintendent of Police. This is a factual contention on which there appears to be no serious controversy. In fact the copy of the chargesheet produced with the present Revision Application indicates that the same is filed in the court by an Inspector of Police. In Revision Application No.400/99, filed by the only accused in Special Case No.8/99, the chargesheet has been filed only by a Sub-Inspector of Police. Learned counsel for the State, after taking instructions, confirms that investigation in the two cases was carried out by P.I. and P.S.I.

respectively, and not as contemplated by Rule 7(1).

6. It is, therefore, obvious that the investigation in each of the two cases was not in compliance with Rule 7(1) of the said Rules.

7. In this context it would be advantageous to take note of the decision of the Andhra Pradesh High Court in the case of D. Ramalinga Reddy Vs. State of AP, reported in 1999 CRI. L.J. 2918. This decision lays down the clear principle in the specific context of Rule 7 discussed hereinabove to the effect that where the investigation is conducted by a Sub Inspector of Police and not by an Officer envisaged under Rule 7, the entire trial is vitiated, and the conviction of the accused under section 3(1)(xi) is liable to be set aside. I am in respectful agreement with the view expressed by the said decision. It only requires to be noted that if the trial were permitted to proceed on the facts as found at present, and even if a conviction were recorded against the present petitioner-accused, that conviction would be liable to be quashed and set aside as illegal, in view of violation or non-compliance with the mandatory provisions of Rule 7. I, therefore, see no purpose in permitting the prosecution to proceed, where the proceedings would be futile, inasmuch as the very foundation of the proceedings is illegal. If the investigation itself is in violation of the statutory rules, it is not possible to contend that the trial should be permitted to continue on an assumption or premise that the illegal investigation can be overlooked. Therefore, it would be just and proper to hold and direct that the petitioners are entitled to a discharge on this ground alone. Since this is the only ground which arises in revision application No.400/99, the same is accordingly allowed and rule is made absolute.

8. So far as the petitioner-accused in Criminal Revision Application No.423/99 is concerned, on the same principle as discussed hereinabove, the petitioner would firstly be entitled to discharge in respect of the charge under the Atrocities Act. It is accordingly so held and directed.

8.1 The only other charge against this petitioner (which is proposed and yet to be framed) is under section 506(1) read with section 114 of IPC. In this context I have been taken meticulously through the FIR filed by the original complainant. I have carefully scrutinized the allegations made against the present petitioner viz. original accused no.4 in the said FIR. By no stretch of

imagination is it possible to read any averment made in the FIR against the present petitioner from which even a semblance of criminal intimidation can be made out. Even otherwise, taking the alternate view that the proposed charge against this petitioner is under section 506(1) read with section 114 of IPC, it presupposes that the present petitioner was guilty of an abetment of some offence within the meaning of section 107 of IPC. Once again examining the FIR from this perspective as well, it is not possible to extract therefrom any averment which would point a finger against the present petitioner as an abettor of any act, committed by any other person. Thus, in my opinion, the present petitioner is liable to be discharged and the application of discharge deserves to be allowed. It is so held and directed. These revisions are accordingly allowed and rule is made absolute.

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